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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,471	12/05/2003	Dwayne E. Ebersole	TN337C	9452

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EXAMINER

DINH, KHANH Q

ART UNIT	PAPER NUMBER
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2151

MAIL DATE	DELIVERY MODE
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01/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/728,471

Applicant(s)

EBERSOLE ET AL.

Examiner

Khanh Dinh

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/24/07.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restriction

1. This is in response to the Remarks filed on 10/24/2007. Claims 1-17 are presented for examination.

Response to Arguments

2. Applicant asserts that the Election/Restriction requirement is improper since the search of prior art for the three groups is in the same areas.

- Examiner respectfully disagrees. Examiner respectfully point out that the restriction is proper since the inventions of the three groups (I, II, III) are distinct and required different searches of class/subclass. Firstly, claims 1-5, drawn to a computing system employing VIA for data communications from a VIA enabled software application thorough at least NIC, classified in class 709, subclass 219; claims 6-19, drawn to a data management for tracking a plurality of NIC connections resident on a computing system, classified in class 709, subclass 225 and claims 10-17, drawn to a method for providing physically independent network interface cards for a computer system, classified in class 709, subclass 228.
- Secondly, inventions I, II, III are related as subcombinations disclosed as usable together in a combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as to a computing system employing

VIA for data communications from a VIA enabled software application thorough at least NIC, classified in a *different Class/Subclass*. Invention II has separate utility such as a data management for tracking a plurality of NIC connections resident on a computing system, classified in a *different Class/Subclass*. Invention III has separate utility such as a method for providing physically independent network interface cards for a computer system, classified in a *different Class/Subclass*.

- Thirdly, the inventions are distinct, each from the other, because of the following reasons:

(a) These inventions have acquired a separate status in the art as shown by their different classifications.

(b) The search required for each Group is different and not co-extensive for examination purposes.

For example, the searches for the three inventions would not be co-extensive because these Groups would require different searches on PTO's classification class and subclass as following:

the Group I search (claims 1-5) would require use of search **class 709, subclass 219** (not require for the inventions II, III).

the Group II search (claims 6-9) would require use of search **class 709, subclass 225** (not require for the inventions I, III).

the Group III search (claims 10-17) would require use of search **class 709, subclass 228** (not require for the inventions I, II).

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper and respectfully maintained. The Applicant's argument was fully considered but they are found not persuasive.


Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (571) 272-3936. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung, can be reached on (571) 272-3939. The fax phone number for this group is (703) 872-9306.

A shortened statutory period for reply is set to expire THIRTY DAYS from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned (35 U.S. C. Sect. 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(A).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305 -9600.


KHANH DINH
PRIMARY EXAMINER
TECHNOLOGY CENTER 2100